Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author: Jones | Analyst: Deborah Barrett | Bill Number: AB 779

Related Bills: See Prior Analysis | Telephone: 845-4301 | Amended Date: August 31, 2007

Attorney: Patrick Kusiak | Sponsor:

SUBJECT: State Agencies Notify California Resident & Office Of Privacy Protection Of Breach In Security Of Data/Required Information To Be Included In Notification

_____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

_____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

__X__ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERN stated in the previous analysis of bill as amended August 20, 2007.

_____ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO _____.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED May 14, 2007, STILL APPLIES.

_____ OTHER – See comments below.

SUMMARY

This bill would do the following:

- Prohibit a state agency that sells goods or services from retaining payment related data and
- Require that certain information be included in notices related to a breach of security issued by state agencies subject to the payment related data requirements.

SUMMARY OF AMENDMENTS

The August 31, 2007, amendments would do the following:

- Provide a specific operative date for the provisions of this bill,
- Add reasonable and actual costs of card replacement to the reimbursement requirements of an agency that has experienced a breach of security,
- Added definitions for medical and insurance information incorporated into the bill as data elements subject to notification if breached, and
- Excuse an agency from the reimbursement requirements if that agency can demonstrate it was in compliance with the payment related data restrictions of this bill.

Board Position:			Legislative Director	Date
_____ S	_____ NA	_____ NP		
_____ SA	_____ O	_____ NAR	Brian Putler	9/10/07
_____ N	_____ OUA	__X__ PENDING		

The August 31, 2007, amendments did not address the "Implementation Consideration" identified in the department's analysis of the bill as amended August 20, 2007, and is repeated here for convenience. The "Effective/Operative Date" and "This Bill" discussions have been revised. The remainder of the department's analysis of the bill as amended May 14, 2007, still applies.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2008, and specifically operative for security breaches that occur on or after July 1, 2008.

POSITION

Pending

THIS BILL

This bill would prohibit, with certain exceptions, a person, business, or state agency that sells goods or services to any resident of California and accepts as payment a credit card, debit card, or other payment device from storing payment related data, except as specified.

This bill would also prohibit the following:

- Storage of sensitive authentication data subsequent to authorization,
- Storage of any payment related data that is not needed for business purposes,
- Retention of the primary account number unless retained in a manner consistent with other provisions of the bill and in a form that is unreadable and unusable by unauthorized persons anywhere it is stored,
- Sending payment related data across any open public network unless the data is encrypted using strong cryptography and security that would render the data otherwise indecipherable, and
- Allowing access to payment related data by any individual whose job does not require that access.

The provisions of this bill are not applicable to financial institutions that are in compliance with federal regulations relating to disclosure of nonpublic information if subject to compliance oversight by a state or federal regulatory agency with respect to those regulations.

This bill would require agencies subject to the payment related data restrictions to notify the owners or licensees of the data if the system containing that data is breached by an unauthorized person. This bill would provide that if notice is required, the agency whose system was breached is liable to the owner or licensee of the information for the reimbursement of all reasonable and actual costs of providing notice to consumers regarding the breach of the security of the system. Reasonable and actual costs include, but are not limited to, the costs of card replacement resulting from the breach of the system. If an agency can demonstrate that it complies with the payment related data restrictions of this bill, the agency is excused from reimbursement liability.

This bill would require notice to the owners or licensees of the payment related data to comply with certain requirements and would specify the type of information to be included in the notice. If the owner or licensee of the information is the issuer of the credit or debit card or the payment device or maintains the account information from which the payment device orders payment, the owner or licensee would be required to provide the California resident the information specified by this bill.

A law enforcement agency may delay notice if it determines that notice will impede a criminal investigation. Notice in those circumstances would be made after a law enforcement agency determines that the notice would not impede a criminal investigation.

This bill would require that if substitute notice as authorized is provided, the Office of Privacy Protection must also be notified.

The provisions of this bill would be severable, would repeal duplicative sections, and would provide double jointing language to resolve chaptering issues with AB 1298.

IMPLEMENTATION CONSIDERATION

Because the majority of the Franchise Tax Board's (FTB) transactions with taxpayers are payments of tax obligations, rather than purchases of goods or services, the department would interpret the bill's provisions related to the retention of payment related data to have no application to FTB. Moreover, because the bill would make the requirement to notify owners or licensees of data in the event of a security breach conditioned upon being subject to the retention of payment related data requirements, these requirements do not apply to FTB either.

LEGISLATIVE STAFF CONTACT

Deborah Barrett
Franchise Tax Board
(916) 845-4301
deborah.barrett@ftb.ca.gov

Brian Putler
Franchise Tax Board
(916) 845-6333
brian.putler@ftb.ca.gov